the decision in *Wright* v. *Hart* is wrong. The unanimous or all but unanimous voice of the judges of the land, in the federal and state courts alike, has upheld the constitutionality of these laws. At the time of our decision in *Wright* v. *Hart,* such laws were new and strange. They were thought in the prevailing opinion to represent the fitful prejudices of the hour." The New York Court of Appeals is to be commended for frankly admitting its erroneous decision instead of blindly following it or attempting to distinguish the present statute from the earlier one. A failure of justice often results from the obstinate refusal of a court to overrule a former decision which is clearly against the weight of authority and reason. The attitude of the court of appeals in admitting its error may be compared to that of Lord MANSFIELD. In speaking of that great common law Judge, BULLER, J., (*Lickbarrow* v. *Mason,* 2 Term Rep. 63), said: "It is but just to say that no judge ever sat here more ready than he was to correct an opinion suddenly given at Nisi Prius."

SPECIFIC PERFORMANCE—OF CONTRACT TO ADOPT.—The defendant's intestate apparently adopted the plaintiff and the latter was brought up as a member of intestate's family. Upon the intestate's death the plaintiff brought an action of specific performance claiming a share of the former's estate. The deed of adoption was found to be void because of a formal defect; furthermore, it contained no promise to leave the plaintiff any property or to make her the intestate's heir. *Held,* that specific performance should not be granted. *Webb* v. *McIntosh* (Ia. 1916), 159 N. W. 637.

The right of inheritance can only be conferred upon a stranger by strict compliance with the adoption statute and so if the plaintiff claims as heir-at-law, she must fail. *Willoughby* v. *Motley,* 83 Ky. 297; *Renz* v. *Drury,* 57 Kan. 84. But in the principal case the plaintiff evidently does not claim as heir-at-law by virtue of the adoption laws, but rather by virtue of an implied contract that intestate should will a share of her property to the plaintiff, which contract the plaintiff seeks to enforce against the deceased's estate. An invalid adoption paper may be evidence of such a contract. *Prince* v. *Prince* (Ala. 1915), 69 So. 906. Where there is a contract to leave one's property upon his death included in a defective agreement to adopt, the two contracts may be treated separately and the latter enforced, although the former cannot be. *Starnes* v. *Hatcher,* 121 Tenn. 330, 117 S. W. 219. Specific performance was granted against the personal representative of the promisor where the agreement in the adoption paper was that the child should inherit the promisor's property or be his heir. *Kofka* v. *Rosicky,* 41 Neb. 328, 25 L. R. A. 207, 59 N. W. 788; *Anderson* v. *Blakely,* 155 Ia. 430, 136 N. W. 210. The two last mentioned cases evidently are decided upon the theory that the promise that the child shall "inherit" is equal to a contract to make a will leaving a share of property to the child. As to the point of the plaintiff's ability to sue upon the contract though not a party to it, see *Crawford* v. *Wilson,* 139 Ga. 654, 78 S. W. 30, 44 L. R. A. N. S. 773. The last mentioned case allows specific performance in case the agreement was only "to adopt," as in the principal case, upon the theory that the parties intended

that the act of adoption should carry with it the right of inheritance and that equity will consider as done what ought to be done. There is at least one case which supports the principal case in denying specific performance under similar circumstances. *Albring* v. *Ward,* 137 Mich. 352, 101 N. W. 204. Though supported by other cases, the argument in *Crawford* v. *Wilson,* supra, seems rather strained and metaphysical; its effect is to enforce a defective adoption agreement.

SUBROGATION—TAXES PAID BY MISTAKE.—Plaintiff, acting under a mistake of fact, paid taxes on defendant's land, and having vainly sought reimbursement from the owner, brings this suit to have his claim subrogated to that of the County. *Held,* an equitable lien should be impressed on the property to the amount of the taxes paid, and the land ordered sold in satisfaction thereof. *Baranowski* v. *Wetzel,* 161 N. Y. Supp. 153.

It is well settled that an equitable lien may arise, in the absence of express contract, to prevent an unjust enrichment. Assistance will not be given to an officious intermeddler, but where the act, from the result of which relief is sought, is induced by a clear mistake of fact, the party is not in any proper sense a volunteer, and this fact should rebut the trite objection to recovery in such a case as this. This case is allied to the situation which arises when one mistakenly improves the land of another. But in that case there is serious danger that in enforcing an obligation upon the owner in the name of unjust enrichment the court would do injustice, for it may well be that under all the circumstances of his situation the owner would not be actually benefitted to the extent of the increased market value of his land, or would not be financially able to invest in improvements. Even with the precautionary provisions of the Betterment Acts, allowing the owner to elect to abandon his land to the improver upon payment of its value without the improvement, hardship may result to one who would prefer to retain his land in its original condition. In this case, however, the owner would have lost his land if the tax had remained unpaid, and the relief granted is in substance subrogation, the mere substitution of one creditor for another. These considerations make the case more nearly analogous to those where one by mistake pays another's debt. A fair number of cases allow the one paying the debt to be subrogated to the rights of the original creditor. 23 L. R. A. 120. The decision reached in the principal case seems highly just, and consequently good law. The judgment is properly in the form of a lien, and an order of sale because the taxes paid constituted a lien against the land. The few cases which have involved the exact question are not in accord. A lien on the land was given in *Goodnow* v. *Noulton,* 51 Ia. 555; *Egbers* v. *Fisher,* 73 Wash. 308, 131 Pac. 1128, and *Childs* v. *Smith,* 51 Wash. 457, 99 Pac. 304. A lien was denied in *Taylor* v. *Reniger,* 147 Mich. 99, 110 N. W. 503, and *Montgomery* v. *City Council of Charleston,* 99 Fed. 825, 40 C. C. A. 108. A personal judgment was denied in *Batcson* v. *City of Detroit,* 143 Mich. 582, 106 N. W. 1104, and *Homestead Co.* v. *Valley Ry.,* 17 Wall. (U. S.), 153.